4-179

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~587~~ 352

THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

HENRY M. ACKLEY AND GEORGE VILAS.

IN ERROR TO THE CIRCUIT COURT OF THE COUNTY OF MILWAUKEE, STATE OF WISCONSIN.

FILED SEPTEMBER 14, 1875.

SUPREME COURT OF THE UNITED STATES.

No. 587.

THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

HENRY M. ACKLEY AND GEORGE VILAS.

IN ERROR TO THE CIRCUIT COURT OF THE COUNTY OF MILWAUKEE, STATE OF WISCONSIN.

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1 STATE OF WISCONSIN,
Milwaukee County, ss:

At a stated term of the circuit court of county of Milwaukee, begun and held according to law at the city of Milwaukee, State of Wisconsin, on the first Monday in May, A. D. 1874, present and presiding, the honorable David W. Small, circuit judge, on the fourth day of June A. D. 1874, the following proceedings were had, to wit:

2 *Summons for relief.—Complaint not served.*

THE STATE OF WISCONSIN,
Circuit Court, Milwaukee County:

HENRY M. ACKLEY, GEORGE VILAS
against
THE CHICAGO, MILWAUKEE & ST. PAUL RAILroad Company.

To the above-named defendant:

You are hereby summoned and required to answer the complaint in this action which will be filed in the office of the clerk of the circuit court, county of Milwaukee, at Milwaukee, and to serve a copy of your answer to the said complaint on the subscribers at their offices, No. 3, 4, & 5, Library Building, Milwaukee, Wisconsin, within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will apply to the court for relief demanded in the complaint.

Dated May 14th, 1874.

FINCHES, LYNDE & MILLER,
Plaintiffs' Attorneys.

3 STATE OF WISCONSIN,
Waukesha County, ss:

I hereby certify and return that on the 15th day of May, A. D. 1874, I personally served the within summons on the said defendant, the said Chicago, Mil. & St. Paul Railroad Company, at the village of Oconomowoc, Waukesha County, Wis., by handing to and leaving with W. W. Collins, the agent of said company and said defendant, at said place, and who has charge of the depot or station at said place, a true copy thereof.

Dated this 19th day of May, 1874.

My fees: Travel, 36 miles, $3.60; service, 1.00; copy, 25—4.85.

CHARLES M. HARTWELL,
Sheriff of Waukesha County, Wisconsin.
By G. A. LUCHINGTON,
Under Sheriff.

(Indorsed:) Circuit court, Milwaukee County. Henry M. Ackley, George Vilas against The Chicago, Milwaukee, St. Paul Railway Company. Summons. Filed June 9th, 1874. L. F. Kellogg, clerk sup. court Wis. Finches, Lynde & Miller, plaintiffs' attys. Filed May 20th, 1874. Patrick Connolly, jr., clerk.

4 *Affidavit on claim of delivery of personal property.*

Circuit court, Milwaukee County.

HENRY M. ACKLEY, GEORGE VILAS
against
THE CHICAGO, MILWAUKEE & ST. PAUL Railway Company.

STATE OF WISCONSIN,
County of Milwaukee, ss:

Henry M. Ackley, one of the plaintiffs in this action, being duly sworn, says that he is a copartner in trade, at Oconomowoc, in the county of Waukesha & State of Wisconsin, with George Vilas, one of the plaintiffs in this action, doing business under the firm name and style of G. Vilas & Co.; and he farther says, that the said plaintiffs are the owners and are lawfully entitled to the possession of the following personal property claimed in this action; that is to say, two car-loads of pine lumber, being about twelve thousand feet; that the said property is
5 wrongfully detained from the plaintiffs by the Chicago, Milwaukee & St. Paul Railway Company, the defendant herein; that the alleged cause of the detention thereof, according to this deponent's best knowledge, information, and belief, is as follows: That said plaintiffs tendered and offered to pay said defendant the sum of thirty dollars for the freight of said lumber by railroad from Oshkosh to Oconomowoc, being the amount allowed and provided for by the laws of this State; that upon such tender and offer to pay, and demand for the delivery of said lumber, the said defendant refused to deliver the said lumber to the plaintiffs unless they would pay as freight therefor the sum of fifty dollars, which was more than it had the right to demand under the laws of this State; that the said property has not been taken for a tax assessment or fine pursuant to a statute, or seized under an execution or attachment against the property of the plaintiffs; and that the actual value of said property, according to the best knowledge and belief of this deponent, is the sum of two hundred & thirty dollars.

HENRY M. ACKLEY.

Subscribed and sworn to before me this 14th day of May, A. D. 1874.
D. R. THOMPSON,
Justice of the Peace, Milwaukee Co., Wisconsin.

6 STATE OF WISCONSIN,
Waukesha County, ss:

I hereby certify and return that by virtue of the written indorsement and order, and the within affidavit and undertaking herewith returned, which undertaking I have fully approved of, I did, on the 15th day of May, A. D. 1874, at Oconomowoc, in said county and State, take the property from the possession of the defendant, the said Chicago, Milwaukee & St. Paul R. Road Company, and from the possession of the agent of said defendant at said place, to wit, W. W. Collins, and retained the same in my custody; and I further certify and return that I delivered to said W. W. Collins, as said agent, and who is the agent in charge of the depot or station at said place of said company, a true copy of the within affidavit, notice, and undertaking, said Collins being the agent from whose possession said property was taken; and I further certify and return that I retained said property in my custody until the

19th day of May, 1874, for three days after service of said notice
7 and the taking thereof; and the return of said property not being required by defendant, I did on the said 19th day of May, 1874, deliver the same to the said plaintiffs.

Dated May 19, 1874.

My fees: Service, $1.00; approval of bond, 50; copies, 1.00; travel, 20; handling and caring of property, 5.00—$7.70.

CHARLES M. HARTWELL,
Sheriff of Waukesha County, Wisconsin.
By G. A. LUCHINGTON,
Under Sheriff.

(Indorsed:) Circuit court, Milwaukee County. Henry M. Ackley, George Vilas, against The Chicago, Milwaukee & St. Paul Railway Company.

To the sheriff of Waukesha County:

You are hereby required to take from the defendant the property mentioned in the within affidavit, and deliver it to the plaintiff.

Dated Milwaukee, May 14, 1874.

FINCHES, LYNDE & MILLER,
Pltfs.' Attys.

Filed June 9th, 1874. L. F. Kellogg, clerk sup. ct. Wis. Filed May 20, '74. Patrick Connolly, jr., clerk.

8 *Undertaking of plaintiff's sureties on claim of delivery of personal property.*

Circuit court, Milwaukee County.

HENRY M. ACKLEY, GEORGE VILAS,
against
THE CHICAGO, MILWAUKEE & ST. PAUL Railway Company.

Whereas the plaintiffs in this action have made an affidavit that the defendant therein wrongly detain certain personal property in the said affidavit mentioned of the value of two hundred and sixty dollars, and the plaintiffs claim the immediate delivery of such property, as provided for in chapter 128 of the revised statutes of the State of Wisconsin: Now, therefore, and in consideration of the taking of said property or any part thereof by the sheriff of the county of Waukesha, by virtue of the said affidavit, and the requisitions thereupon endorsed, we, the undersigned, Henry M. Ackley and George Vilas, of Oconomowoc, Wis., as principals, and Jacob Lamfram and E. B. Birchard, of the
9 same place, as sureties, do hereby undertake and become bound to the defendant in the sum of four hundred and sixty dollars for the prosecution of the action of the plaintiffs in the above-entitled action, against the defendant, for wrongfully detaining the said property, for the return to the defendant of the said property, or so much thereof as shall be taken by virtue of the said affidavit and requisition thereupon endorsed if a return thereof shall be adjudged, and for the payment to it of such sum as may for any cause be recovered against the plaintiff' in this action.

Dated May 14, 1874.

HENRY M. ACKLEY. [SEAL.]
GEORGE VILAS. [SEAL.]
JACOB LAMFRAM. [SEAL.]
E. B. BIRCHARD. [SEAL.]

STATE OF WISCONSIN,
County of Waukesha, ss:

Jacob Lamfram, one of the subscribers to the foregoing undertaking, being sworn, says that he is a resident and within this State, and is worth the sum of ten thousand dollars over and above all debts and liabilities, in property not by law exempt from execution.

JACOB LAMFRAM.

Sworn to before me this 14th day of May, 1874.

WARHAM PARKS,
Notary Public, Waukesha Co., Wis.

10 STATE OF WISCONSIN,
County of Waukesha, ss:

One of the subscribers to the foregoing undertaking, being sworn, says that he is a resident and freeholder within this State, and is worth the sum of ten thousand dollars over & above all debts and *exemption* in property not by law exempt from execution,

E. B. BIRCHARD.

Sworn to before me this 14th day of May, 1874.

WARHAM PARKS,
Notary Public, Waukesha Co., Wis.

11 I hereby approve of the within undertaking both as to the form and the sufficiency of the sureties thereof.
Dated May 14, 1874.

CHARLES M. HARTWELL,
Sheriff of Waukesha County.
By G. A. TUCHINGTON,
Under Sheriff.

(Indorsed:) Circuit court, Milwaukee County. Henry M. Ackley, George Vilas, against the Chicago, Milwaukee & St. Paul Railway Company. Undertaking. Filed June 9, 1874. L. F. Kellogg, clerk sup. ct. Wis. Filed May 20, '74. Patrick Connolly, jr., clerk.

12 Circuit court, Milwaukee County.

HENRY M. ACKLEY & GEORGE VILAS, PLAINTIFFS,
against
THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY, defendants.

Said plaintiffs, by Finches, Lynde & Miller, their attorneys, respectfully allege that at the date of the commencement of this suit they were and still are copartners in trade, under the name, firm, and style of Ackley & Vilas.

Said plaintiffs allege that at and before the time of the commencement of this suit they were lumber-merchants at Oconomowoc, in the county of Waukesha, in the State of Wisconsin, and were on that day and prior

thereto, to wit, on the 10th day of May, 1874, the owners of two car-loads of lumber.

Said plaintiffs allege that on said last-mentioned date the
13 said two car-loads of lumber were in the custody and possession of said defendant; that said defendant wrongfully and unjustly detained said two car-loads of lumber from the said plaintiffs.

Said plaintiffs allege that prior to the commencement of this suit they made a demand upon the defendant for the said two car-loads of lumber, and did there and then tender to said defendant all legal charges which said defendant then and there had or could have on the said two car-loads of lumber, and said defendant did then and there decline and refuse to deliver said lumber or any portion thereof to said plaintiffs, but unjustly, wrongfully, and illegally detained the same.

Said plaintiffs allege that the value of said lumber is two hundred and sixty dollars, wherefore these plaintiffs demand judgment against the defendant for the recovery of the possession of said two car-loads of lumber, or for the sum of two hundred and sixty dollars, its value, in case a delivery cannot be had, together with six cents damages for its detention, as well as the costs of this action.

FINCHES, LYNDE & MILLER,
Plaintiffs' Attys.

(Indorsed:) Circuit court, Milwaukee County. Henry M. Ackley et al. against the Chicago, Milwaukee and St. Paul Railway Company. Complaint. Finches, Lynde & Miller, pltfs.' atty'. Filed June 4th, 1874. Patrick Connolly, jr., clerk. Filed June 9, 1874. L. F. Kellogg, clerk sup. ct. Wis.

14 Circuit court, Milwaukee County.

HENRY M. ACKLEY AND GEORGE VILAS
against
THE CHICAGO, MILWAUKEE & ST. PAUL Railway Company.

The said defendant, by John W. Cary, its attorney, answering the plaintiffs' complaint in this action, says that it is a corporation duly organized and doing business, under and by virtue of the laws of the State of Wisconsin, as a railway company, and engaged in the business of carrying freight and passengers over its line of railway; that its line of railway extends from Oshkosh, in the State of Wisconsin, to Milwaukee, and thence through Oconomowoc to Watertown Junction, and thence to La Crosse.

That the Chicago and Northwestern Railway Company is a corporation duly organized and doing business under and by virtue of the laws of Wisconsin, and is operating a railway from Oshkosh to Watertown Junction, and thence to La Crosse.

15 That on or about the 10th day of May, 1874, the said plaintiffs shipped two car-loads of lumber from Oshkosh to Oconomowoc, over the Chicago and Northwestern Railway; that said last-named company transported said two car-loads of lumber from Oshkosh to Watertown Junction, over its said line of road, a distance of sixty-three miles, and then delivered said cars in the usual course of business to this defendant, to be transported by this defendant from said Watertown to Oconomowoc, over this defendant's road, a distance of twelve miles, and demanded of this defendant the sum of thirty dollars, as the com-

pensation of said Chicago and Northwestern Railway Company for the transportation of said lumber from Oshkosh to *to* said Watertown Junction.

That on the 11th day of May, 1874, this defendant received said two car-loads of lumber from said Chicago and Northwestern Railway Company for transportation to said Oconomowoc, and then and there paid to said Chicago and Northwestern Railway Company the said
16 sum of thirty dollars so as aforesaid demanded.

That said defendant, on the 11th day of May, 1874, transported said two car-loads of lumber from said Watertown Junction to Oconomowoc, and on the same day had said two car-loads of lumber at Oconomowoc, ready to be delivered to said plaintiffs on their paying the said sum of thirty dollars advance charges so as aforesaid paid by this defendant to said Chicago and Northwestern Railway Company, and the further sum of eighteen dollars, the charges of this defendant for transporting said lumber from said Watertown Junction to Oconomowoc, and which said sum of eighteen dollars was the usual and customary charge of this defendant, and no more than a reasonable and fair compensation for said service; and as to all the rest and residue of said complaint not hereinbefore specially admitted or denied, this defendant has no knowledge or information sufficient to form a belief.

JOHN W. CARY,
Defendant's Attorney.

(Indorsed:) Circuit court Milwaukee County. Henry M. Ackley and George Vilas against The Chicago, Milwaukee & St. Paul Railway Company. Answer. John W. Cary, deft.'s atty.

Due service of the within answer admitted this 27th day of May, 1874.

FINCHES, LYNDE & MILLER,
Pltfs.' Attys.

Filed June 4th, 1874. Patrick Connolly, jr., clerk.

Filed June 9, 1874. L. F. Kellogg, clerk sup. ct. Wis.

17 Circuit court, Milwaukee County.

HENRY M. ACKLEY AND GEORGE VILAS
against
THE CHICAGO, MILWAUKEE & ST. PAUL RAILway Company.

It is hereby stipulated and admitted:

1st. That plaintiffs are partners and general owners of the lumber, as alleged in the complaint.

2nd. That the defendant is a corporation duly organized under and by virtue of the laws of Wisconsin, and engaged in operating a railroad, and that one part of its railroad extends from Oshkosh to Milwaukee and thence through Oconomowoc to Watertown Junction and to La Crosse, a distance of about one hundred and thirty miles.

3d. That the Chicago and Northwestern Railway Company is a corporation duly organized under and by virtue of the laws of Wisconsin, engaged in operating a railroad, and that its line extends from
18 Oshkosh to Watertown Junction and thence to Chicago, and that said roads intersect and connect at said Watertown Junction.

4th. That the distance from Oshkosh to Watertown Junction over the road of the Chicago and Northwestern Railway is sixty-three miles, and the distance from said Watertown Junction to Oconomowoc over the road of the defendant is twelve miles.

5th. That on the 10th day of May, 1874, the said plaintiffs shipped said two car-loads of lumber at Oshkosh over the Chicago and Northwestern Railway to Oconomowoc; that said company transported said two car-loads of lumber over its line of road from Oshkosh to Watertown Junction, and at said Junction, on the 11th day of May, 1874, delivered said two car-loads of lumber to the defendant to be transported by said defendant to Oconomowoc, subject to the payment of the sum of thirty dollars for the charges of said Chicago and Northwestern Railway Company as its compensation for transporting said lumber from Oshkosh to said Watertown Junction, and that said last-named company had no line of road from Watertown Junction to Oconomowoc.

19 6th. That said defendant, on the 11th day of May, 1874, received said two car-loads of lumber from said Chicago and Northwestern Railway Company at said Watertown Junction, for transportation to Oconomowoc, and then and there paid to said last-named company the aforesaid sum of thirty dollars demanded by it as its compensation for transporting said lumber from Oshkosh to Watertown Junction, as advance charges, and on the same day the defendant transported said lumber over its road from Watertown Junction to Oconomowoc, and that this defendant charged for its compensation for said transportation from Watertown Junction to Oconomowoc the sum of eighteen dollars; that said lumber was of the value of two hundred and sixty dollars.

7th. That on the said 11th day of May, 1874, this defendant had said two car-loads of lumber at Oconomowoc ready to be delivered to said plaintiffs on their paying to this defendant the said sum of thirty dollars advance charges so as aforesaid paid by this defendant to said Chicago and Northwestern Railway Company, and the further sum of

20 eighteen dollars, the charges of this defendant for its compensation for transporting the said lumber from Watertown Junction to Oconomowoc, amounting in all to the sum of forty-eight dollars, which amount the defendant demanded as a condition of delivery.

8th. That said plaintiffs then and there refused to pay said amount, but afterwards, and before the commencement of this action, tendered to the said defendant the sum of thirty dollars in lawful money, and thereupon demanded said lumber, but that this defendant then and there refused to accept said tender or deliver possession of said lumber.

JOHN W. CARY,
Deft.'s Attorney.
FINCHES, LYNDE & MILLER,
Pltfs.' Attorneys.

(Indorsed:) Circuit court Milwaukee County. Henry M. Ackley & George Vilas against The Chicago, Milwaukee & St. Paul Railway Company. Stipulation. Filed June 9th, 1874. L. F. Kellogg, clerk sup. ct. Wis. Filed June 6th, 1874. Patrick Connolly, jr., clerk.

21 Circuit court, Milwaukee County.

HENRY M. ACKLEY ET AL.
vs.
THE CHICAGO, MILWAUKEE & ST. PAUL Railway Co.

Jury: G. Logeman, Henry Taylor, A. Frostel, John Orth, John Gro-

ninger, W. C. Halm, H. J. Elliott, John Schlitz, Theo. Simderman, Charles Salb, L. R. Fuchs, Michael Sebold.

(Indorsed:) Circuit court, Milwaukee County. Henry M. Ackley et al. vs. The Chicago, Milwaukee & St. Paul Ry. Co. Jury. Filed June 9, 1875. L. F. Kellogg, clerk sup. ct., Wis. Filed June 4th, 1874. Patrick Connolly, jr., clerk.

22 Circuit court, Milwaukee County.

HENRY M. ACKLEY & GEORGE VILAS, PLAINTIFFS, *against* THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, DEFENDANT.

We, the jury, find for the plaintiffs, and find that the plaintiffs were, at the date of the commencement of this suit, the owners of the two car-loads of lumber mentioned in the complaint; that at the time of the commencement of this suit they were lawfully entitled to the possession of the said two car-loads of lumber; that the two car-loads of lumber were at said date unlawfully and wrongfully detained by the defendant; that the value of said lumber is two hundred and sixty dollars; that the damages for its detention by said defendant is six cents.

H. J. ELLIOT, *Foreman.*

(Indorsed:) Circuit court, Milwaukee County. Henry M. Ackley, George Vilas, plaintiffs, against The Chicago, Milwaukee & St. Paul R'y Co., defendants. Verdict. Filed June 9th, 1874. L. F. Kellogg, clerk sup. ct. Wis. Filed June 4th, 1874. Patrick Connolly, jr., clerk.

23 Circuit court, Milwaukee County.

HENRY M. ACKLEY & GEORGE VILAS, PLAINTIFFS, *against* THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, DEFENDANT.

On the verdict of the jury, and on motion of Finches, Lynde & Miller, it is ordered and adjudged that the plaintiffs at the time of the commencement of this suit were the owners of the two car-loads of lumber mentioned in the complaint, and are lawfully entitled to the possession of the said two cars of lumber and to six cents damages for its detention, and it appearing that the property has been seized on the writ issued in this cause and delivered to said plaintiffs and is now held by them, it is ordered and adjudged that said plaintiffs are lawfully entitled to the possession of and to hold the said two cars of lumber and six cents damages for its detention.

24 And it is further ordered and adjudged that the plaintiffs do recover of and from the said defendant the sum of forty-one $\frac{85}{100}$ dollars costs by them incurred in and about this suit, amounting in the aggregate to the sum of forty-one $\frac{91}{100}$ dollars.

By the court.

DAVID W. SMALL, *Judge.*

STATEMENT.—Judgment docketed June 6, 1874, at 9.30 o'clock a. m. Damages, .06; costs, 41.85—41.91.

(Indorsed :) Circuit court, Milwaukee County. Henry M. Ackley et al. vs. The Chicago, Milwaukee & St. Paul Railway Co. Judgment. Filed June 9, 1874. L. F. Kellogg, clerk sup. ct. Wis. Filed June 4th, 1874. Patrick Connolly, jr., clerk.

25 Circuit court, Milwaukee County.

HENRY M. ACKLEY & GEORGE VILAS
against
THE CHICAGO, MILWAUKEE & ST. PAUL RAILway Company.

Take notice that the defendant, the Chicago, Milwaukee and St. Paul Railway Company, appeals from the judgment rendered in this action to the supreme court.

JOHN W. CARY,
Attorney for Defendant.

To PATRICK CONNOLLY, Jr.,
Clerk of Circuit Court, &c.
Mess. FINCHES, LYNDE & MILLER,
Attorneys for Pltffs.

(Indorsed :) Circuit court, Milwaukee County. Henry M. Ackley & George Vilas against The Chicago, Milwaukee & St. Paul Railway Co. Notice to appeal. Filed June 9, 1874. L. F. Kellogg, clerk sup. ct. Wis.

Service of the above admitted June 5, 1874.
FINCHES, LYNDE & MILLER,
Pltfs.' Attys.

Filed June 5th, 1874. Patrick Connolly, jr., clerk.

26 Circuit court, Milwaukee County.

HENRY M. ACKLEY & GEORGE VILAS
against
THE CHICAGO, MILWAUKEE & ST. PAUL RAILway Co.

Whereas judgment was rendered on the 4th day of June, 1874, before the Hon. David W. Small, judge of the circuit court of Milwaukee County, against the Chicago, Milwaukee and St. Paul Railway Co., defendant, for the sum of six cents damages in favor of Henry M. Ackley and George Vilas, plaintiffs, in the above-entitled cause ;

And whereas the said Chicago, Milwaukee and St. Paul Railway Company, concerning itself aggrieved by the said judgment, has appealed therefrom according to the provision of the statute in such case made and provided, and conformed in all things required therein :

27 Now, therefore, we, the undersigned, S. S. Merrill and John C. Gault, do hereby, pursuant to the statute in such case made and provided, undertake that if judgment be rendered against said appellant and execution thereon be returned unsatisfied in whole or in part, we will pay the amount so remaining unpaid.

Dated June 4th, A. D. 1874.

S. S. MERRILL. [SEAL.]
JNO. C. GAULT. [SEAL.]

STATE OF WISCONSIN,
County of Milwaukee, ss:

S. S. Merrill and John C. Gault, the subscribers to the above undertaking, being severally duly sworn, each for himself says that he is a resident and householder within the State, and is worth the sum of one thousand dollars over and above all his debts and liabilities exclusive of property exempt from execution.

G. E. WEISS,
Notary Public, Milwaukee Co., Wis.

(Indorsed:) Circuit court, Milwaukee County. Henry M. Ackley & George Vilas against The Chicago, Milwaukee & St. Paul Railway Co. Undertaking. Filed June 9, 1874. L. F. Kellogg, clerk sup. ct. Wis. Service of the above admitted June 5, 1874.

FINCHES, LYNDE & MILLER,
Pltfs.' Attys.

Filed June 5, 1874. Patrick Connolly, jr., clerk.

28 Afterwards, to wit, on the 4th day of June, A. D. 1874, the issue so as aforesaid joined came on to be tried at the court-house, in Milwaukee, before the honorable David W. Small, circuit judge, Mess. Finches, Lynde & Miller appearing for the plaintiffs, and John W. Cary for the defendant, and a jury was duly empannelled, chosen, tried, & sworn.

The said plaintiffs, to maintain said issue on their part, then introduced & read in evidence a stipulation, signed by the attorneys of the respective parties, in the words and figures following, to wit:

29 Circuit court, Milwaukee County.

HENRY MACKLEY AND GEORGE VILAS
against
THE CHICAGO, MILWAUKEE & ST. PAUL RAILway Company.

It is hereby stipulated and admitted: 1st. That plaintiffs are partners and general owners of the lumber, as alleged in the complaint.

2d. That the defendant is a corporation, duly organized under and by virtue of the laws of Wisconsin, and engaged in operating a railroad, and that one part of its railroad extends from Oshkosh to Milwaukee, and thence through Oconomowoc to Watertown Junction and to La Crosse, a distance of about one hundred and thirty miles.

3rd. That the Chicago and Northwestern Railway Company is a corporation, duly organized under and by virtue of the laws of Wisconsin, engaged in operating a railroad, and that its line extends from
30 Oshkosh to Watertown Junction and thence to Chicago, and that said roads intersect and connect at said Watertown Junction.

4th. That the distance from Oshkosh to Watertown Junction, over the road of the Chicago and Northwestern Railway, is sixty-three miles, and the distance from said Watertown Junction to Oconomowoc, over the road of the defendant, is twelve miles.

5th. That on the 10th day of May, 1874, the said plaintiffs shipped said two car-loads of lumber at Oshkosh, over the Chicago and Northwestern Railway, to Oconomowoc; that said company transported two

car-loads of lumber over its line of road from Oshkosh to Watertown Junction, and at said junction, on the 11th day of May, 1874, delivered said two car-loads of lumber to the defendant, to be transported by the said defendant to Oconomowoc, subject to the payment of the sum of thirty dollars for the charges of said Chicago and Northwestern Railway Company as its compensation for transporting said lumber
31 from Oshkosh to said Watertown; and that said last-named company had no line of road from Watertown Juncton to Oconomowoc.

6th. That said defendant, on the 11th day of May, 1874, received said two car-loads of lumber from said Chicago and Northwestern Railway Company at said Watertown Junction for transportation to Oconomowoc, and then and there paid to said last-named company the aforesaid sum of thirty dollars, demanded by it as its compensation for transporting said lumber from Oshkosh to Watertown Junction as advance charges, and on the same day the defendant transported said lumber over its road from Watertown Junction to Oconomowoc; and that this defendant charged for its compensation for said transportation from Watertown Junction to Oconomowoc the sum of eighteen dollars; that said lumber was of the value of two hundred and sixty dollars.

7th. That on the said 11th day of May, 1874, this defendant
32 had said two car-loads of lumber at Oconomowoc ready to be delivered to said plaintiffs on their paying to this defendant the said sum of thirty dollars advance charges so as aforesaid paid by this defendant to said Chicago and Northwestern Railway Company, and the further sum of eighteen dollars, the charges of this defendant for its compensation for transporting the said lumber from Watertown Junction to Oconomowoc, amounting, in all, to the sum of forty-eight dollars; which amount the defendant demanded as a condition of delivery.

8th. That said plaintiffs then and there refused to pay said amount, but afterwards, and before the commencement of this action, tendered to the said defendant the sum of thirty dollars in lawful money, and thereupon demanded said lumber, but that this defendant then and there refused to accept said tender or deliver possession of said lumber.

JOHN W. CARY, *Deft.'s Attorney.*
FINCHES, LYNDE & MILLER,
Pltf.'s Attys.

33 The defendant then read in evidence the following certificate from the secretary of state, to wit:

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

At an adjourned meeting of the Milwaukee & St. Paul Railway Company, held in the city of Milwaukee, on the 7th day of February, 1874, at which were present, in person and by proxy, a majority of all its shareholders, the following resolutions were unanimously adopted:

Resolved, That the corporate name of this company be changed to the Chicago, Milwaukee & St. Paul Railway Company.

Resolved, That the secretary of the company file in the office of the secretary state, on the 11th day of February, 1874, a copy of the above resolution, certified under his hand and the seal of the company, in order that the change of name take effect from that date.

34 I, R. D. Jennings, secretary of the Milwaukee & St. Paul Railway Company, certify the foreging to be a true and correct copy

from the minutes of a meeting of the stockholders of said company, held at their office in Milwaukee, February 7th, 1874.

{ MILWAUKEE AND ST. PAUL RAILWAY COMPANY, INCORPORTED 1863. } Witness my hand and the corporate seal affixed this seventh day of February, 1874.

R. D. JENNINGS,
Secretary.

{ CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY, INCORPORATED 1863. } The seal of the company under the name of the Chicago, Milwaukee & St. Paul Railway Company.

Recorded February 11th, 1864.

35 STATE OF WISCONSIN,
Secretary's Office, ss :

The secretary of state of the State of Wisconsin hereby certifies that the foregoing has been compared with the original record in this office, and that the same is a true and correct copy thereof and of the whole of the original.

In witness whereof I have hereunto set my hand and affixed the great seal of the State, at the capitol, in Madison, this second day of June, A. D. 1874.

[GREAT SEAL.]

PETER DOYLE,
Secretary of State.

36 Whereupon the plaintiffs rested their cause.

And the defendant, to maintain the issue on its part, called as a witness Dwight W. Keyes, who was sworn, and testified that he was chief clerk in the office of the general freight agent of defendant, and that he had been connected with the freight business of defendants' road since 1857, and was acquainted with the rates of freight generally.

The defendant then offered to prove that nine dollars per car-load of lumber from Watertown Junction to Oconomowoc was a fair and reasonable charge, to which the plaintiffs' counsel objected, on the ground that the legislature had fixed the rate to be paid, and that the amount so fixed would control and govern, without regard to whether it was reasonable compensation or not. The court sustained the objection, and defendants' counsel then and there excepted, and the evidence was excluded.

37 The foregoing is all the testimony given on said trial, and after agreement by counsel the said court did then and there charge said jury that chapter 273 of the session laws of 1874 was constitutional and binding upon the railroad companies, that the amount fixed by said act for the transportation of freight was all that the companies were entitled to charge, and that as the distance from Oshkosh to Oconomowoc was only seventy-five miles, the said railroad companies were only authorized to charge fifteen dollars per car-load for said lumber, and that as the plaintiffs tendered that amount to the defendant before bringing suit, and the defendant refused to receive the same, the plaintiffs were entitled to said lumber, and that their verdict should be for the plaintiffs.

The said defendant's counsel did then and there except to said charge and to each and every part thereof as given, and because none of said

testimony, rulings, objections, decisions, and exceptions appear
38 in the record and proceedings of the trial of said action the said circuit judge, at the request of the said defendant, has to this bill of exceptions set his hand and seal this 4th day of June, A. D. 1874.

DAVID W. SMALL,
Circuit Judge. [SEAL.]

We have read the foregoing bill of exceptions, and consent to its being signed by the circuit judge.
June 4th, 1874.

FINCHES, LYNDE & MILLER,
Pltffs.' Attorneys.

(Indorsed:) Circuit court, Milwaukee County. Henry M. Ackley et al. vs. The Chicago, Mil. & St. Paul R'y Co. Bill of exceptions. Filed June 9, 1874. T. F. Kellogg, clerk sup. ct. Wis. Filed June 5th, 1875. Patrick Connolly, jr., clerk.

39 Circuit court, Milwaukee County, May term, 1874.

Finches, Lynde & Miller.

HENRY M. ACKLEY, GEORGE VILAS
against
THE CHICAGO, MILWAUKEE AND ST. PAUL RAILway Company. } Replevin.

May 20, 1874. And now come the plaintiffs in the above-entitled action, by Finches, Lynde & Miller, their attorneys, and file their summons and certificate of service endorsed thereon, as follows:

STATE OF WISCONSIN,
Waukesha County, ss :

I hereby certify and return that, on the 15th day of May, A. D. 1874, I personally served the within summons on the said defendant, the said Chicago & Milwaukee & St. Paul Railroad Company, at the village of Oconomowoc, Waukesha County, Wisconsin, by handing to and leaving with H. H. Collins, the agent of said company, and said defendant at said place, and who has charge of the depot or station at said place, a true copy thereof dated this 19th day of May, 1874.
Fees $4.85.

CHAS. M. HARTWELL,
Sheriff of Waukesha County, Wis.
By G. A. LUDINGTON,
Under Sheriff.

Same time affidavit of plaintiff on claim & delivery of personal*ly*
40 property with order endorsed thereon, directing the sheriff to take from the defendant the property therein described, & deliver it to the plaintiff and undertaking of plaintiff's sureties in claim and delivery filed June 4th, 1874. Complaint and answer filed.

And now comes the plaintiff in this action by Mess. Finches, Lynde & Miller, their attorneys, and the defendant by John W. Cary, its attorney, and the cause being at issue, a jury is called who came, to wit, G. Logemann, A. Trostel, John Groceringer, H. J. Elliott, Theod. Sundermann, L. P. Finches, Henry Taylor, John Orth, W. C. Hahn, John

Schlitz, Charles Salb, Michael Sebold, twelve good and lawfull men of the county, who, being duly tried, empanneled and sworn, the trial proceeded, and the proofs being heard, inspected and submitted, the trial concluded, and the jury by direction of the court, without leaving the box, respectively, do say that they find for the plaintiffs, and assess the value of the property wrongfully detained by the defendant is two hundred and sixty dollars ($260.00) and assess his damages at six cents.

Same time, stipulations & judgment filed as follows:

41 On the verdict of the jury and on motion of Finches, Lynde & Miller, it is ordered adjudged that the plaintiffs, at the time of the commencement of the suit, were the owners of the two car-load' of lumber mentioned in the complaint, and are lawfully entitled *entitled* to the possession of the said two car-loads of lumber, and to 6 cents damages for its detention. And it appearing that the property has been seized on the writs issued in this cause and delivered to said plaintiffs, and it is now held by hem, it is ordered and adjudged that said plaintiffs are lawfully entitled to the possession and to hold the said two cars of lumber and six cents damages for its detention.

And it is further ordered and adjudged that the plaintiffs do recover of and from the said defendant the sum of forty-one and $\frac{85}{100}$ dollars costs by them incurred in and about this suit, amounting in the aggregate to the sum of forty-one $\frac{91}{100}$ dollars.

By the court.

DAVID W. SMALL, *Judge.*

42 STATEMENT: Judgment docketed June 6th, 1874, at 9.30 o'clock a. m. Damages $ .06; costs 41.85—$41.91.

JUNE 5th, 1874.—Bill of exceptions filed. Same time undertaking & notice of appeal filed as follows:

Take notice that the defendant, the Chicago, Milwaukee & St. Paul Railway Company, appeals from the judgment rendered in this action, to the supreme court.

JOHN W. CARY,
Attorney for Deft.

To PATRICK CONNOLLY, JR., *Clerk of Circuit Court, &c.*

Messr. FINCHES, LYNDE & MILLER, *Attys. for Plaintiffs.*

STATE OF WISCONSIN,
Circuit court, Milwaukee County, ss:

I, Patrick Connolly, jr., clerk of said court, do hereby certify that I have compared the foregoing copy with the original docket entries in the action therein entitled; that it is a correct transcript therefrom, and of the whole thereof, as the same remains of record in my office, and that the papers hereunto annexed are the originals and all of the papers filed in said action.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 8th day of June, A. D. 1874.

[SEAL.] PATRICK CONNOLLY, JR., *Clerk.*

43 JUNE 8, 1874.—Original papers & certified copy docket entries sent to LaF. Kellogg, clerk supreme court, Madison, by express.

JUNE 5, 1875.—Original papers received from clerk of supreme court and placed on file together with rem ttitur as follows:

This cause came on to be heard on appeal from the judgment of the circuit court of Milwaukee County, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the circuit court of Milwaukee County in this cause be, and the same is hereby, affirmed with costs against the said appellant taxed at the sum of dollars.

JULY 29, 1875.—Writ of error filed. Citation filed & bond filed.

(Indorsed:) Circuit court, Milwaukee County. Henry M. Ackley et al. vs. The Chicago, Milwaukee and St. Paul R'y Co. Original papers and certified copy docket entries. Filed June 9, 1874. L. F. Kellogg, clerk of supreme court, Wisc.

44 Be it remembered that, at a term of supreme court of the State of Wisconsin, begun and held at the capitol, in Madison, the seat of government of said State, on the first Tuesday, to wit, on the second day of June, A. D. 1874, on the fifty-sixth day of the term, to wit, on the thirty-first day of October, A. D. 1874, present, the Hon. E. G. Ryan, chief-justice, and the Hon. Orsamus Cole, and the Hon. William P. Lyon, associate justices of said court, the following proceedings were had inter alia, to wit:

Appeal from circuit court, Milwaukee County, State of Wisconsin.

HENRY M. ACKLEY AND GEORGE VILAS, respondents,
vs.
THE CHICAGO, MILWAUKEE AND ST. PAUL Railway Company, appellant.

This cause came on to be heard on appeal from the judgment of the circuit court of Milwaukee County, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by
45 this court that the judgment of the circuit court of Milwaukee County in this cause, be, and the same is hereby, affirmed, with costs against the said appellant, taxed at the sum of dollars.

STATE OF WISCONSIN,
Supreme Court, ss:

I, La Fayette Kellogg, clerk of the supreme court of the State of Wisconsin, do hereby certify that the above and foregoing is a true copy of the order & judgment of the court in the above-entitled cause, as appears of record.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Madison, this 9th day of November, A. D. 1874.

[SEAL.] LA FAYETTE KELLOGG,
Clerk of the Supreme Court of the State of Wisc.

(Indorsed:) State of Wisconsin. Supreme court. Henry M. Ackley and George Vilas, respondents, against The Chicago, Milwaukee and St. Paul R. R. Co., appellant. Remittitur. Filed June 5, 1875. Patrick Connolly, jr., clerk.

46 *Costs and disbursements.*

State of Wisconsin, circuit court, Milwaukee County.

HENRY M. ACKLEY ET AL., PLAINTIFF', *against* THE CHICAGO, MILWAUKEE, AND ST. PAUL Ry. Co., defendant: } No. . May term, 1874. Plaintiffs' costs and disbursements.

Tax on suit		$1 00
Tax for clerk's salary		8 00
Disbursements:		
Subpœnas		
Revenue stamp		
Certified copy judgment		
Commission		
Transcript		
Report of referee		
Sheriff's fees	4 85	
Protest		
Postage		
Witnesses' fees		
Affidavits		
Printers' fees on publication of summons		
Jury fees	3 00	
Register on filing lis pendens		
Commissioners' fees		
Attorney's fees	25 00	
		32 85
Docketing judgment or transcript		
Interest on verdict		
		$41 85

Costs and disbursements examined and taxed at the sum of forty-one dollars and eighty-five cents.

Dated Milwaukee, June 6, A. D. 1874.

PATRICK CONNOLLY, JR., *Clerk.*

COUNTY OF MILWAUKEE:

, plaintiff' attorney in the above action, being duly sworn, says that the disbursements above mentioned have been made in this action, or will be necessarily incurred therein.

Sworn to before me this day of , 187 .

(Indorsed:) Circuit court, Milwaukee County. Henry M. Ackley et al., plaintiff', against The Chicago, Milwaukee and St. Paul Ry. Co., defendant. Costs and disbursements. Filed June 6, 1874. Patrick Connolly, jr., clerk. Filed June 9, 1874. L. F. Kellogg, clerk supreme court Wis.

47 STATE OF WISCONSIN,
Circuit Court, Milwaukee County, ss:

I, Patrick Connolly, jr., clerk of said court, do hereby certify that I have compared the foregoing copy with the original record and proceedings entered in the action therein entitled; that it is a correct transcript therefrom and of the whole thereof, as the same remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this eighth September, A. D. 1875.

[SEAL.] PATRICK CONNOLLY, JR., *Clerk.*

STATE OF WISCONSIN,
County of Milwaukee, ss:

I, David W. Small, do hereby certify that I am judge of the second judicial circuit in said State and presiding judge of the circuit court within and for the county of Milwaukee; that Patrick Connolly, jr., whose name is subscribed to the certificate subjoined to the within record, is, and was at the date of said certificate, clerk of the circuit court for the county of Milwaukee and State aforesaid, duly elected and qualified; that I am well acquainted with his handwriting, and know the signature thereto to be genuine; and further that said certificate or attestation is in due form of law, and that the seal thereto attached is the proper seal of said court.

Witness my hand at Milwaukee, in said county, this eighth day of September, A. D. 1875.

DAVID W. SMALL.

48 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the judge of the circuit court of Milwaukee County, of the State of Wisconsin, greeting:

Because, in the records and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court of Milwaukee, of the State of Wisconsin, before you, remitted there for execution from the supreme court of the State of Wisconsin, that court being the highest court of law or equity of said State in which a decision could be had in said suit between Henry M. Ackley and George Vilas, plaintiffs, and the Chicago, Milwaukee and St. Paul Railway Company, defendant, wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, a manifest error hath happened, to the great damage of the said The Chicago, Mil-
49 waukee and St. Paul Railway Company, as by the complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error that of

right and according to law and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court of the United States, this twenty-eighth day of July,
50 in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the one hundredth.

EDWARD KURTZ,
Clerk U. S. Circuit Court for the Eastern District of Wisconsin.

(Indorsed:) No. 3569. Circuit court, Milwaukee County. H. M. Ackley et al. vs. The Mil. & St. Paul R'y Co. Writ of error. Allowed July 29th, 1875. David W. Small, circuit judge 2d judicial circuit of Wisconsin. Filed July 29th, 1875. Patrick Connolly, jr., clerk.

51 Know all men by these presents, that we, Sherburn S. Merrill and John W. Cary, both of the city of Milwaukee, and State of Wisconsin, are held and firmly bound unto Henry M. Ackley and George Vilas in the full and just sum of five hundred dollars, to be paid to the said Henry M. Ackley and George Vilas, their certain attorney or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 27th day of July, A. D. 1875.

Whereas lately, in the circuit court of Milwaukee County, in the State of Wisconsin, in a suit pending in said court between Henry M. Ackley and George Vilas, plaintiffs, and the Chicago, Milwaukee and St. Paul Railway Company, defendant, judgment was rendered against the said Chicago, Milwaukee and St. Paul Railway Company; and the said Chicago, Milwaukee and St. Paul Railway Company having obtained
52 a writ of error, issuing out of the Supreme Court of the United States, and filed a copy thereof in the clerk's office of the said circuit court of Milwaukee County, in the State of Wisconsin, to reverse the said judgment in the aforesaid suit, and a citation, directed to the said Henry M. Ackley and George Vilas, citing and admonishing them to be and appear at the Supreme Court of the United States, to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such, that if the said Chicago, Milwaukee and St. Paul Railway Company shall prosecute said writ of error to effect, and answer all damages and costs if it fails to make good its plea, then the above obligation to be void; else to remain in full force and virtue.

JOHN W. CARY. [L. S.] [L. S.]

In presence of—

(Indorsed:) 3569. The Chicago, Milwaukee and St. Paul Railway Company, plaintiff in error, vs. Henry M. Ackley and George Vilas, defendants in error. Bond. Approved July 29th, 1875. Finches, Lynde & Miller, plff.'s attys. The within bond approved July 29th, 1875. David W. Small, judge. Filed July 29th, 1875. Patrick Connolly, jr., clerk.

53 The United States of America to Henry M. Ackley and George Vilas, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second

Monday of October next, pursuant to writ of error filed in the clerk's office of the circuit court of Milwaukee County, in the State of Wisconsin, wherein the Chicago, Milwaukee and St. Paul Railway Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable David W. Small, judge of the circuit court of the county of Milwaukee, in the State of Wisconsin, this twenty-seventh day of July, in the year of our Lord one thousand eight hundred and seventy-five.

DAVID W. SMALL,
Circuit Judge.

(Indorsed:) 3569. Supreme Court United States of America. The Chicago, Milwaukee and St. Paul Railway Company, plaintiff in error, against Henry M. Ackley and George Vilas, defendants in error. Citation. John W. Cary, atty. for plff.

Service admitted July 29th, 1875, without prejudice
FINCHES, LYNDE & MILLER,
Attys. for Deft. in Error.

Filed July 29th, 1875. Patrick Connolly, jr., clerk.

(Indorsement on cover:) No 587. The Chicago, Milwaukee & St. Paul Railway Company, plaintiff in error, vs. Henry M. Ackley and George Vilas. Wisconsin circuit court, Milwaukee County. Filed 14th September, 1875.

Supreme Court of the United States.

THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY, Plaintiff in Error,

vs.

HENRY M. ACKLEY AND GEORGE VILAS, Defendants in Error.

No. 587. October Term, 1875.

This is a writ of error to the circuit court for Milwaukee county, Wisconsin. The action is replevin for two car-loads of lumber.

The pleadings are found on pages 4 to 6 of record, and the bill of exceptions, pages 10 to 13. The case is as follows:

The Chicago and Northwestern railway extends from Oshkosh, Wisconsin, to Watertown Junction, a distance of sixty-three miles, where it crosses the railway of the plaintiff in error, which extends from said junction to Oconomowoc and thence to Milwaukee and Chicago. On the 10th day of May, 1874, the defendants in error shipped two car-loads of lumber at Oshkosh, over the Chicago and Northwestern railway, consigned to themselves at Oconomowoc; that said Chicago and Northwestern Company transported said lumber over its line of road from Oshkosh to Watertown Junction, and at said junction, on the 11th day of May, delivered said cars to plaintiff in error to be transported to Oconomowoc, subject to the payment of the sum of thirty dollars for the charges of said Chicago and Northwestern Company as its compensation for transporting said lumber from Oshkosh to Watertown Junction; that plaintiff in error received said lumber, and then and there paid said Northwestern the aforesaid sum of thirty

dollars, as demanded, as advance charges, and then transported the lumber from said junction to Oconomowoc, and charged therefor its regular local rates; that the defendant refused to pay the amount charged, and tendered thirty dollars as the full compensation to be paid, and then brought replevin for the lumber.

On the trial the foregoing facts were stipulated by the parties.

The plaintiff in error offered proof that its charges were no more than a reasonable compensation for the services rendered, which was objected to and excluded, on the ground that the Legislature had fixed the compensation to be paid, and that the amount so fixed would control and govern, without regard to whether it was a reasonable compensation or not. (Record, p. 12.)

This was all the testimony in the case. The court charged the jury that said chapter 273 of the Session Laws of 1874 was constitutional and binding upon the railroad companies; that the amount fixed by said act for the transportation of freight was all that the companies were entitled to charge and that as the distance from Oshkosh to Oconomowoc was only seventy-five miles, the railroad companies were only authorized to charge fifteen dollars per car load for said lumber; and that as plaintiff in error tendered that amount before bringing suit, which was refused, the defendant in error was entitled to said lumber, and their verdict should be for defendant in error. (Record, p. 12.)

Sections 4 and 5 of chapter 273 are the provisions of law referred to by the judge in his charges, and are as follows:

"SEC. IV. No individual company, or corporation, owning, managing, or leasing any railroad or part of a railroad designated in section one as Class A or B, shall charge for or receive a greater or higher rate for carrying articles named in the several special classes herein designated than is hereinafter provided, namely, Class D, not exceeding six cents per 100 lbs. for the first twenty-five miles, and not exceeding four cents per hundred pounds for the second twenty-five miles, and not exceeding two cents per hundred pounds for each additional twenty-five miles or fractional

part thereof, unless the fraction shall be less than thirteen miles, in which case the rate shall be one cent for said fractional part, unless the whole distance be over two hundred miles, when no greater rate than one-half cent per hundred pounds shall be received for such twenty-five miles over said first-mentioned distance. Class E, not exceeding twelve cents per barrel for the first twenty-five miles, and not exceeding eight cents per barrel for the second twenty-five miles, and not exceeding four cents for each additional twenty-five miles or fractional part thereof, unless the fraction be less than thirteen miles, in which case the rate shall not exceed two cents per barrel for said fractional part, unless the whole distance be over two hundred miles, when no greater rate than one cent per barrel shall be charged for such additional twenty-five miles over said two hundred miles. Class F, not exceeding fifteen cents per barrel for the first twenty-five miles and not exceeding six cents per barrel for the second twenty-five miles, and not exceeding three and one-half cents per barrel for each additional twenty-five miles or fractional part thereof, unless the fraction be less than thirteen miles, in which case the rate shall not exceed one and one-half cents per barrel for said fractional part. *Class G, not exceeding eight dollars per car-load for the first twenty-five miles, and not exceeding five dollars per car load for the second twenty-five miles and not exceeding two dollars per car-load for each additional twenty-five miles or fractional part thereof, unless the fraction be less than thirteen miles, in which case the rate shall not exceed one and one-half dollars per car-load for such fractional part.* Class H, not exceeding ten dollars per car-load for the first twenty-five miles, and not exceeding seven dollars per car-load for the second twenty-five miles, and four dollars per car-load for each additional twenty-five miles or fractional part thereof, unless the fraction be less than thirteen miles, in which case the rate shall not exceed two dollars per car-load for such fractional part. Class I, not exceeding eleven dollars per car-load for the first twenty-five miles, and not exceeding six dollars per car-load for the second twenty-five miles, and not exceeding three dollars per car-load for each additional twenty-five miles or fractional part thereof, unless the fraction be less than thirteen miles, in which case the rate shall not exceed one dollar and fifty cents per car-load for such fractional part. Class J, not exceeding eight dollars per car-load for the first twenty-five miles, and not exceeding six dollars per

car-load for the second twenty-five miles, and not exceeding two and one-half dollars per car-load for each additional twenty-five miles or fractional part thereof, unless the fraction be less than thirteen miles, in which case the rate shall not exceed one dollar per car-load for such fractional part.

"SEC. V. No individual, company, or corporation, owning, operating, managing, or leasing any railroad mentioned in Classes A and B, in the first section of this act, shall receive a greater or higher rate for carrying any freight under the four general classes named in the third section of this act, than was charged for carrying freights in said four general classes on said railroad on the first day of June, 1873; and no individual, company, or corporation, owning, operating, managing, or leasing any railroad mentioned in Class C, in the first section of this act, shall receive a greater or higher rate for carrying freight than was received by said individual, company, or corporation, for carrying such freight on the first day of June, 1873. *In computing the rates for carrying any freight, according to the provisions of this act, the distance for carrying such freight shall be computed from where it is received, notwithstanding it was carried from one railroad to another.*"

The jury returned a verdict for the plaintiff below, upon which judgment was entered.

This judgment was appealed to the Supreme Court and there affirmed, and the record remitted to the circuit court, from which last court it was removed to this court.

By the decision in this case the plaintiff in error, while compelled to transport the lumber, is denied all right to compensation.

ERROR.

The error assigned is the charge of the said circuit judge that said chapter 273 was constitutional and binding upon the railroad company.

II.

The judgment should be reversed for the error of the judge in charging the jury.

In support of which the court is respectfully referred to the brief filed in No. 214 of this term.

JOHN W. CARY,
Of Counsel for Plaintiff in Error.